BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California.	Rulemaking 20-09-001

REPLY COMMENTS OF THE CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION

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Pursuant to Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC" or "Commission"), the California Cable and Telecommunications Association ("CCTA")[1] hereby submits these reply comments in response to comments filed by other parties on the Assigned Administrative Law Judge's Ruling dated May 28, 2021 ("ALJ Ruling"), and the ruling granting an extension of time to file reply comments dated July 7, 2021.

I. INTRODUCTION

The record in this proceeding and other developments show that the Commission should not move forward with an investigation of so-called "redlining." Under recently enacted legislation implementing Governor Newsom's $6 billion broadband investment (the "Broadband Trailer Bill"),[2] the Commission has been tasked with implementing a wide range of statutory mandates, including many with specific deadlines in order to maximize use of federal funds

[1] CCTA is a trade association consisting of cable providers that have collectively invested more than $40 billion in California's broadband infrastructure since 1996 with systems that pass approximately 96 percent of California's homes.

[2] *See* S.B. 156 (Ch. 112, Stats of 2021), taking effect immediately July 20, 2021 as urgency measure ("Broadband Trailer Bill"). In referencing this bill, CCTA does not address the effectiveness or lawfulness of the bill, but rather references the bill only to show the significant relevant responsibilities placed on the Commission by the Legislature.

available under the American Rescue Plan Act of 2021.[3] The Commission's many new responsibilities include:

- Assisting with the unprecedented $3.25 billion statewide open-access middle-mile network and identifying locations for deployment with consideration of public comment on many complex issues;[4]

- Administering major changes to the California Advanced Services Fund ("CASF"), including the development of new programs, and implementing updates to existing programs;[5]

- As part of a new $2 billion Federal Funding Account within CASF, determining how to define "urban" and "rural" to equitably allocate funding for last-mile projects in urban and rural counties and seek to encumber these funds by June 30, 2023;[6]

- Establishing a new program within CASF to finance projects that offer "free" broadband service for residents of a "low-income community";[7]

- Establishing a new program, including all eligibility requirements and financing terms and conditions, for a new $750 million Broadband Loan Loss Reserve Fund to pay costs related to the financing of broadband infrastructure deployment by local governments and nonprofit organizations;[8] and

- Serving on a new broadband advisory council and meeting other new requirements to ensure transparency and accountability to the public and Legislature for the Governor's massive investment to meet state broadband goals.[9]

Given these initiatives, the Commission should decline to move forward with an unneeded and undefined investigation into baseless allegations of systemic "digital redlining" practices. The record contains no evidence of discriminatory practices by Internet service

[3] Pub. L. No. 117-2 (Mar. 11, 2021).

[4] *See* Broadband Trailer Bill, Section 3 (adding new Gov. Code § 11549.54).

[5] *See id*., Section 7 (amending Pub. Util. Code § 281).

[6] *See id*.

[7] *See id.*

[8] *See id*., Section 8 (adding new Pub. Util. Code § 281.2).

[9] *See id*., Section 3 (adding new Gov. Code § 11549.58).

providers ("ISPs") in the deployment of their networks, and the Commission has limited resources, especially given the new responsibilities assigned to the Commission under the Broadband Trailer Bill. Pursuing a needless global investigation into all ISPs' network deployments would only detract from evidence-driven proactive efforts necessary to close the digital divide.

Opening comments unanimously support the goal of ensuring that all Californians have access to a home broadband connection. There is no question—and no disagreement—that the deployment of high-quality broadband should be available throughout the state without regard to household income. CCTA's members are doing their part by offering high-speed connectivity to the vast majority of California households, as well as successful programs to promote broadband adoption by low-income consumers (including holistic digital literacy efforts).

Notwithstanding largely anecdotal claims to the contrary, the record also makes clear that high-speed broadband is widely available throughout California. According to the Commission's own data, 95 percent of California households have access to fixed broadband at 100 Mbps download speeds.[10] As multiple parties have explained, the remaining gaps in high-speed broadband deployment are more accurately attributable to factors such as geography and population density rather than discrimination.[11] While several parties point to remaining challenges in achieving ubiquitous broadband *adoption*, the data simply do not support the allegation that ISPs are engaged in systemic redlining in any reasonable sense of the word.

Parties alleging redlining propose a wide variety of definitions, none of which are based

[10] *See* EOY 2019 CA Fixed Broadband Deployment Analysis By Population, https://public.tableau.com/app/profile/cpuc/viz/EOY2019CAFixedBroadbandDeploymentAnalysisByPopulation/County.

[11] *See* CCTA Comments at 9; Charter Comments at 14-15 and Brattle Group Study at 31; Comcast Comments at 20-21 and Israel-Keating Decl. ¶¶ 28-35; Cox Comments at 10-11; AT&T Comments at 3.

on any laws applicable to ISPs or evidence of wrongdoing by ISPs. It is unfortunate, and unreasonable, that some commenters appear to view a highly charged term such as "redlining" as a catch-all for a broad range of factors that may be relevant to closing gaps in connectivity but have nothing to do with discrimination by ISPs. It is not surprising then that parties asserting the existence of redlining generally neglect to put forward objective data showing the existence of a systemic issue, instead relying on anecdotes and subjective judgments about the quality and cost of available broadband services.[12] In contrast, CCTA's members, other ISPs, and additional parties have provided detailed, data-driven analyses that refute any finding of systemic discrimination in broadband deployment in California.[13]

Arguments over a formal regulatory definition of redlining or whether the Commission should proceed with an investigation of the topic are not productive and only distract from the real task at hand. As the California Emerging Technology Fund ("CETF") recommends, the Commission should not "expend its scarce resources on a redlining investigation, but instead more fruitfully focus on solutions."[14] As the Advanced Communications Law & Policy Institute

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[12] *See, e.g.,* Joint Advocates Comments at 13-14 (arguing that redlining should be assessed based on alleged "underinvestment" in network upgrades and proximity to fiber-optic infrastructure); Cal Advocates Comments at 10 (suggesting that redlining "could include pricing practices that make broadband less affordable, or marketing practices that under-promote broadband services in particular areas").

[13] *See, e.g.,* Charter Comments, Exhibit A at iii (providing expert analysis by Coleman Bazelon and Paroma Sanyal of the Brattle Group finding that "racial/ethnic composition and income do not appear to drive a provider's decision to add or remove service from a given census block," and that "it is misleading to use the number of providers or the presence of fiber as an indicator of broadband investment"); Comcast Comments, Israel-Keating Decl. ¶¶ 27-39 (providing expert declaration of Drs. Mark A. Israel and Bryan G. M. Keating finding that high-speed broadband services are broadly available in California and neither overall availability nor Comcast's pricing are a function of household income).

[14] CETF Comments at 8. CETF also observes that "[e]ven if the Commission were to conclude there is redlining, the next issue is whether this Commission has jurisdiction to mandate a remedy, particularly as to broadband infrastructure, currently classified by the Federal Communications Commission as an 'information service.'" *Id.* Indeed, it is not clear what purpose an investigation would serve given the Commission's lack of regulatory authority over ISPs.

("ACLP") observes, "[i]f the goal is to ensure that as many people as possible are using broadband, then the Commission's focus—and the focus of policymakers generally—must be broader and more solution-oriented."[15] Rather than getting bogged down in semantics or adversarial debate over what could be deemed digital redlining, CCTA supports the positions of CETF, ACLP and others that the Commission should instead focus on crafting targeted solutions to well-defined problems of broadband availability in low population density areas and remaining adoption challenges in particular communities. As discussed further below, the Commission has been charged with implementing or advising on broadband deployment programs identified in the Broadband Trailer Bill and should work collaboratively with stakeholders who share the goal of making broadband available to all Californians.

II. REPLY TO COMMENTS ON QUESTIONS 1-3 IN THE ALJ RULING

Question 1. Are the inputs and assumptions of the studies discussed above accurate? How could one improve these studies?
Question 2. Do the findings of these studies provide evidence of a systemic problem in California?
Question 3. Do these studies indicate discrimination based on race, socioeconomic status or otherwise, and, if yes, what are the societal implications?

A. Opening Comments Reveal Major Flaws in the Three Studies.

Opening comments confirm that the three studies cited in the ALJ Ruling rely on flawed methodologies and bad or obsolete data and fail to address the causes of the digital divide. None of the studies provides evidence of systemic discrimination.

AT&T's comments demonstrate the many flaws in the Communications Workers of America District 9 ("CWA") and the National Digital Inclusion Alliance ("NDIA") study. Specifically, the study offers no citations or data for key empirical claims (a point on which Cal

[15] ACLP Comments at 6.

Advocates agrees[16]), understates coverage levels and fails to address actual California deployment data except in passing.[17]

Multiple parties note that the Greenlining Institute study is not aimed at analyzing the state of broadband deployment in California but instead focuses almost exclusively on individual anecdotes highlighting the importance of high-speed broadband access,[18] without quantitative data to back its assertions. While Cal Advocates seems to support this unscientific approach by advocating for the use of "qualitative" data,[19] Commission decisions should be based on a more rigorous, data-driven approach. The Greenlining Institute study also never explains how it formulated its "heat map" of Oakland or what data was used (if any).[20] As Comcast explains in its opening comments, the Greenlining Institute study is simply wrong about broadband availability in Fresno and Oakland: 100 Mbps service is almost universally available in both cities (98 percent in Fresno, 99 percent in Oakland).[21] Comparing undefined broadband coverage today to redlined housing maps from the 1930s—using no discernible data to support the comparison—is problematic and counterproductive to advancing efforts to bridge the digital divide.[22]

As for the 2019 USC Annenberg Study, Charter shows that the study inappropriately focuses on fiber-to-the-premises ("FTTP") deployments while excluding hybrid-fiber coaxial

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[16] *See* Cal Advocates Comments at 6.

[17] *See* AT&T Comments at 20-21. NDC also observes that the study may be highly biased because it was prepared by union workers with an agenda. NDC Comments at 3. CETF also disagrees with a study that focuses on only one provider. *See* CETF Comments at 4.

[18] *See* AT&T Comments at 15; Cal Advocates Comments at 6; Comcast Comments at 6-9; NDC Comments at 3; TURN Comments at 9-10.

[19] Cal Advocates Comments at 2.

[20] Comcast Comments at 6-7; TURN Comments at 11.

[21] Comcast Comments at 6.

[22] *Id*.

("HFC") deployments and other technologies, incorrectly focuses on the number of local wireline competitors in particular neighborhoods, and relies on stale deployment and competition data from 2014 to 2017.[23] Most notably, the study fails to capture Charter's ubiquitous deployment of high-speed broadband networks in Los Angeles County. AT&T similarly notes that the study relies on stale data that dates to a time when fiber deployment was in its early stages.[24]

Even certain consumer advocacy groups that insist digital redlining is a systemic problem acknowledge the limitations of the studies.[25] The few commenters that appear to uncritically accept the findings of the three studies fail to deeply analyze the data or acknowledge that 100 Mbps service is available to the overwhelming majority of Californians regardless of race or income.[26] Nor do they offer any substantive data to support allegations of systemic digital redlining.

[23] Charter Comments at 5-6, 19-27.

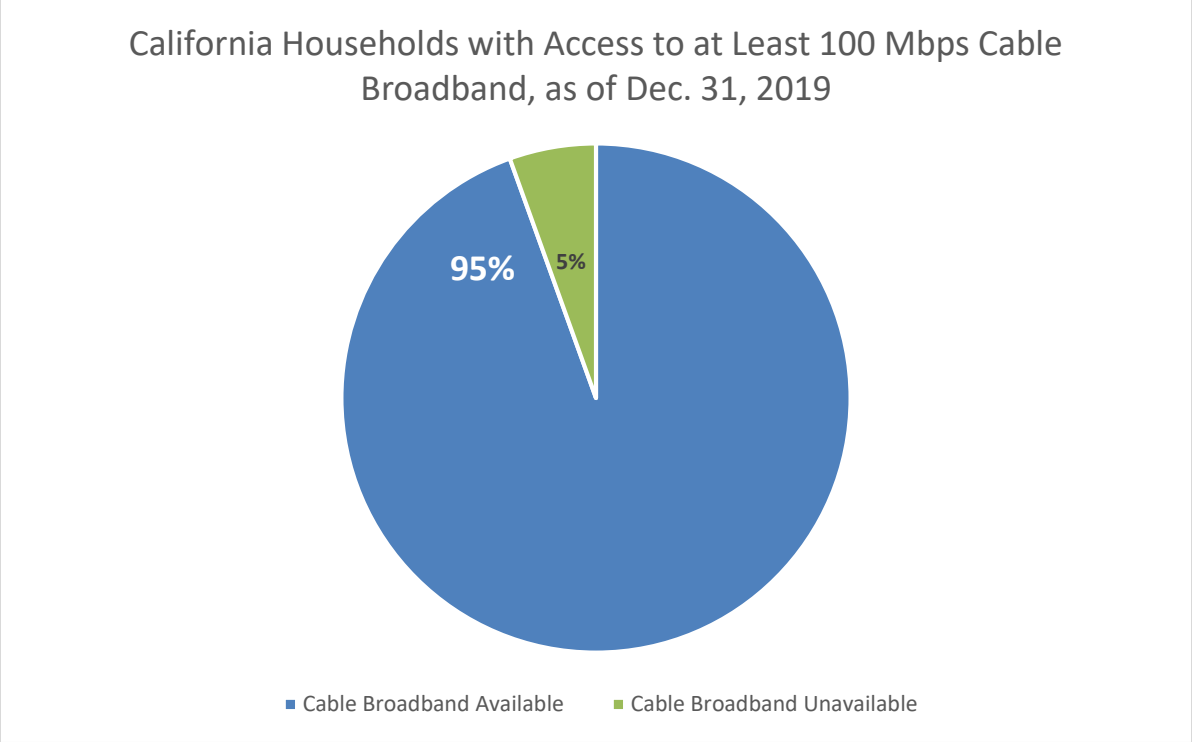
[24] AT&T Comments at 22.

[25] *See* NDC Comments at 3 ("The studies suffer from some limitations in that they utilize small sample sizes, which may skew findings toward some individual biases…."); Cal Advocates Comments at 6-7 ("Assumptions or methodologies used in a redlining analysis should be clearly articulated.").

[26] *See EOY 2019 CA Residential Fixed Broadband Deployment*, Tableau https://public.tableau.com/app/profile/cpuc/viz/EOY2019BBdeploymentbyCountyandZipCode/Dashboard (last updated June 16, 2021); CCTA Comments at 2; Charter Comments at 12-13; Comcast Comments at 24; Cox Comments at 4.

B. Comments Show Cable Providers Do Not Discriminate but Rather Have Been Integral to the Rapid Growth of High-Speed Broadband Availability and Reducing the Digital Divide.

Certain parties allege that ISPs are somehow failing to deploy their networks in California,[27] but these accusations are plainly false. As a result of cable providers' massive investments in their networks, high-speed broadband (including gigabit service) is now widespread across California (see chart below[28]), collectively serving over 12 million households.



Further, the cable industry is actively innovating, developing, and testing technologies that promise to bring *multi-gigabit* speeds to Californians in the future.[29] Broadband providers—and

[27] *See* Joint Advocates Comments at 12; CWA Comments at 1.

[28] This figure is based on data produced in the *Digital Infrastructure and Video Competition Act (DIVCA) & State Video Franchise Holder Employment*, 2020 ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE, available at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2020/divca-report-dec-2020.pdf.

[29] CCTA Comments at 2.

the cable industry in particular—have made significant investments to deploy broadband infrastructure in recent years and blanket California with high-speed internet service offerings. While a small fraction of Californians do not have 100 Mbps service where they live, these residents are largely found in rural areas that are more costly and often more difficult to serve because of persistent regulatory barriers to network deployment.[30] The remaining task is to find ways for all stakeholders to collaboratively work together to eliminate these barriers so Californians in rural areas can enjoy all the same benefits of high-speed broadband. Launching an investigation into baseless accusations of digital redlining would be highly unproductive and would divert attention and resources from strategies aimed at addressing the true causes of the digital divide and the Commission's role with implementing the Broadband Trailer Bill. Similarly, taking a detour into competition issues as some parties have suggested[31] is not relevant to issues related to redlining (and would fall outside of the scope of this proceeding).

III. REPLY TO COMMENTS ON QUESTION 4 IN THE ALJ RULING

Question 4. If the Commission were to undertake an investigation into whether ISPs are not serving certain communities or neighborhoods within their service or franchise areas, a practice generally referred to as redlining, how should the Commission conduct that investigation? What data should the Commission rely on for its investigation?

In considering whether an investigation would be helpful and an appropriate next step, the Commission should consider whether there is evidence of a problem—and, if so, whether any such "problem" could readily be resolved via an investigation. Here, the record does not establish that there is a systemic problem, or one for which an investigation is appropriate. As

[30] AT&T Comments at 25; Cox Comments at 10-11; Consolidated Comments at 2; Charter Comments at 13-15 & 33-35.

[31] *See, e.g.,* CWA Comments pdf at 9-10 (no page numbers in the comments). CWA takes issue with the fact that some customers have access to only one *cable* offering—citing to an alleged failure to "develop competition." However, the number of *cable* providers in a given area is outside the scope of this proceeding, which is to "accelerate the deployment of and access to quality, affordable internet for all Californians." OIR at 1.

discussed herein, there is a wide divergence of opinion among commenters as to what constitutes redlining. Just as important, proposals for an investigation are based on qualitative anecdotes and parties' subjective judgments about network upgrades and arbitrary preferences as to broadband network architecture. As CCTA discusses in response to Questions 1 to 3 above, the studies are deeply flawed and therefore cannot support the Commission embarking on a formal investigation of areas that lack service, particularly when resources would be better spent focusing on ensuring deployment.

Parties favoring an investigation make a wide range of proposals. For example, the Joint Advocates recommend that the Commission investigate the pace and deployment plans of network upgrades, the regularity of network maintenance, and service quality.[32] Meanwhile, Cal Advocates calls for inquiry into investment in higher-income areas versus low-income areas as an indicator of digital redlining.[33] Noticeably, these proposals ask for different types of investigations—a clear indicator that there is no consensus as to a "problem" and that proposals are not based on complete and accurate data. In fact, the proposals for investigations boil down to subjective criticisms of particular network upgrades by individual ISPs, with no clear evidence of a systemic problem or how it could be resolved via an investigation.

Accordingly, CCTA agrees with CETF,[34] among other parties, that the Commission should not expend scarce resources on a "redlining" investigation because it is not needed. The Commission should focus available resources on expanding broadband deployment, including by adopting recommendations for a collaborative approach.[35] Again, as CETF notes, focusing on

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[32] Joint Advocates Comments at 12-14; 29-30.

[33] Cal Advocates Comments at 2, 8-9.

[34] *See* CETF Comments at 8 ("CETF does not recommend that the Commission expend its scarce resources on a redlining investigation …").[CCTA would like to delete]

[35] *See* ACLP Comments at 34-38; Frontier Comments at 4.

known deployment challenges would benefit consumers, unlike an amorphous investigation into an undefined standard of conduct for the deployment of an information service over which the Commission lacks authority to mandate a remedy.[36]

IV. REPLY TO COMMENTS ON QUESTION 5 IN THE ALJ RULING

Question 5: Historically, redlining has meant that some neighborhoods, generally with affluent, white residents, have access to a particular service while poorer residents do not. How should the Commission define redlining? In the context of broadband Internet service, should Internet speeds offered to residents be taken into consideration.

CCTA remains concerned with Question 5 because the premise of the question (broadband is available to "affluent, white residents" but not to "poorer residents") runs contrary to the facts on the ground of near-universal access to fixed broadband service in California, particularly in urban areas.[37]

Some parties wrongly suggest that an ISP is engaged in redlining any time it does not serve a particular area. For example, Cal Advocates proposes a definition of redlining that would encompass any number of factors that "limit investments" in broadband infrastructure or "limit broadband availability" in certain areas.[38] TURN asserts that a purported "lack of investment in rural areas of the state" constitutes redlining,[39] and thereby wrongly conflates the cost and difficulty of extending broadband to remote rural areas with discrimination based on income. These proposals not only are inconsistent with one another, but also are overbroad and unhelpful because the framework could lead to absurd conclusions, *e.g.*, ISPs could be deemed to have "redlined" the peak of Mount Shasta (elevation 14,179 feet) or the floor of Death Valley because service is not offered there.

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[36] CETF Comments at 8.

[37] *See* CCTA Comments at 7-8.

[38] Cal Advocates Comments at 10.

[39] *See* TURN Comments at 7-8.

Other parties wrongly confuse redlining with whether *multiple* ISPs offer high-speed broadband in an area,[40] or, like the USC Annenberg study, attempt to equate redlining with whether an ISP utilizes its preferred type of broadband network architecture: FTTP.[41] Such proposals, as ACLP notes, "espouse a biased view of broadband connectivity."[42] Additionally, CCTA agrees with CETF that the Commission should view broadband deployments "on a technology neutral basis."[43]

Similarly, some parties claim ISPs are "redlining" whenever consumers choose not to have a home broadband connection (*i.e.*, do not *adopt* wireline broadband) even where service is *available*. For example, Cal Advocates asserts that the definition of redlining should include practices in which providers limit broadband adoption, and calls for an investigation of discrepancies between subscription rates in different areas, claiming that providers are purportedly redlining "through pricing or marketing practices."[44] Similarly, Next Century Cities ("NCC") claims that adoption issues are intertwined with a lack of broadband access and must be considered as the Commission investigates redlining.[45]

CCTA recognizes that adoption is an important issue. However, any lack of wireline broadband adoption by consumers and redlining by ISPs are unequivocally different, and the

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[40] *See, e.g.,* TURN Comments at 6 ("digital redlining should be identified as occurring in areas where residents do not have two providers of wireline broadband services that offer downstream services of at least 100 Mbps."). CWA Comments pdf at 9-10 (no page numbers in the comments).

[41] *See* CWA Comments pdf at 12 (no page numbers in the comments) (citing USC Annenberg study); Joint Advocates Comments at 13-14 (arguing for an assessment of redlining based on proximity to fiber-optic infrastructure).

[42] ACLP Comments at 23.

[43] CETF Comments at 9; *see also id.* at 2 (noting that "CETF does not recommend a fiber-only mandate as touted by others," because "[w]ired and wireless technologies each have its place in a geographically complex and large state like California, with mountainous, desert, valley, and coastal terrains").

[44] Cal Advocates Comments at 9-10.

[45] NCC Comments at 10; *see also* AARP Comments at 25 (noting that adoptions rates should continue to inform California's progress in addressing redlining).

Commission should not conflate the two or incorporate adoption into any redlining definition. Moreover, far from attempting to *limit* broadband adoption as Cal Advocates alleges, ISPs are actively working to *increase* adoption by households that do not currently subscribe to broadband. For example, CCTA members Comcast, Charter, and Cox each offer affordable broadband plans designed for low-income customers.[46] In addition, Congress and the Federal Communications Commission ("FCC") have adopted a number of subsidy and other programs within the last year that target increasing adoption rates for low-income consumers, among other groups.[47] Importantly, government benefit programs such as the federal Emergency Broadband Benefit directly address cost as a factor in non-adoption.[48]

The Commission should reject the attempts of CWA, AARP, and others to tie any lack of adoption by particular individuals or communities solely to affordability.[49] As Comcast's experts observe, "even where broadband prices are very low (*e.g.*, as a result of low-income programs or government subsidies), not all eligible households choose to adopt broadband."[50] Other credible studies establish that there are a number of additional reasons for non-adoption,

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[46] *See* CCTA Comments at 4; *see also* Comcast Comments at 11-14; Charter Comments at 7-8, and Cox Comments, at 9.

[47] For example, the FCC is currently administering the Emergency Broadband Benefit program, which will provide $3.2 billion in support nationally, and the Emergency Connectivity Fund, which will provide $7.2 billion to be available as part of the E-Rate program to reimburse schools and libraries for providing free broadband service and connected devices to students, school staff, and library patrons at their homes. In addition, the National Telecommunications and Information Administration will award $1 billion to expand access to and adoption of broadband service on tribal land or for remote learning, telework, or telehealth resources during the COVID–19 pandemic.

[48] *See* Comcast Comments, Israel-Keating Decl. ¶ 17 ("To the extent that broadband-access affordability is a societal objective and broadband access is unaffordable to some households, economists generally favor addressing these concerns through subsidies targeted to high-cost-to serve or low-income households rather than pervasive price regulation."). *See also* Joint Advocates Comments at 29 (recommending continued subsidization of broadband for low-income consumers).

[49] *See, e.g.,* CWA Comments pdf at 11 (no page numbers in the comments) (highlighting Fresno County's poverty rate as an important reason for lack of broadband adoption); AARP Comments at 14.

[50] *See, e.g.,* Comcast Comments, Israel-Keating Decl. ¶ 24.

including access to the Internet outside the home, the belief that a smartphone is sufficient to meet the consumer's needs, lack of digital literacy, or a simple lack of interest in using broadband.[51] These findings underscore that remaining barriers to broadband adoption are often complex and distinct from the availability or cost of high-speed broadband service.

The Commission already has access to information about the barriers to broadband adoption[52] and it can use that information and the additional information provided in this proceeding[53] to continue to identify and implement tangible solutions to increase broadband adoption rates among Californians who do not currently subscribe. The Commission should build on that knowledge base and, as Cox, ACLP, and others urge, create a framework for bringing stakeholders together to find new solutions for improving broadband adoption.[54] The Commission can arrive at those solutions by taking a holistic approach to promoting digital literacy.[55]

Fundamental differences as to what constitutes "digital redlining" even among proponents of Commission action show that an investigation would not be a productive use of time or resources. As Comcast notes, "it is unclear why the Commission would need to adopt a formal definition of redlining or what purpose such a definition would serve."[56] For that matter, federal and state law already have frameworks that deal with denial of access to cable based on

[51] *Id.* at 10; Charter Comments at 30; CCTA Comments at 3-4.
[52] *See* CCTA Comments at 6; CETF Comments at 11 (citing to its *2021 Statewide Survey on Broadband Adoption*).
[53] *See, e.g.,* Comcast Comments at 26-27 (citing additional studies); Comcast Comments, Israel-Keating Decl. ¶¶ 27-39; Charter Comments, Exhibit A, Coleman Bazelon & Paroma Sanyal, *Understanding Broadband Deployment: A Case Study of Los Angeles County*, Brattle Group.
[54] Cox Comments at 12; ACLP Comments at 9-11, 19-22.
[55] CCTA Comments at 6, 14.
[56] Comcast Comments at 22.

income.[57] As noted above, CCTA supports CETF's suggested approach to move beyond semantic fights over what constitutes redlining, and "instead more fruitfully focus on solutions."[58]

V. REPLY TO COMMENTS ON QUESTION 6 IN THE ALJ RULING

Question 6. Does the table in Section 3 of this ruling indicate redlining or some other form of systemic issue? It appears to indicate that poorer communities are more likely to be unserved, and wealthier communities are more likely to be served. Is this analysis accurate? Please explain why it is or is not accurate.

There is no basis to find that ISPs are basing deployment decisions on income. Instead, the data confirms what is already well known: (i) low population density—not income—is the primary driver of the digital divide;[59] (ii) low-density areas are more costly to serve due to the high fixed costs of deploying last-mile facilities, and (iii) low-density areas are concentrated in rural parts of the state where deployment is often more difficult (*e.g.*, due to more challenging terrain, limited access to key infrastructure, etc.).

Several data points confirm this conclusion. *First*, 100 Mbps service is available to 92 percent of the lowest-income households statewide, compared to 95 percent overall.[60] And the 10 lowest-income areas in California—all high-density areas—enjoy full coverage.[61] The same

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[57] *See* 47 U.S.C. § 541(a)(3) (prohibiting denial of access to cable service "to any group of potential residential cable subscribers ***because of the income of the residents of the local area*** in which such group resides") (emphasis added); Pub. Util. Code § 5885(a) ("A cable operator or video service provider that has been granted a state franchise under [DIVCA] may not discriminate against or deny access to service to any group of potential residential subscribers ***because of the income of the residents in the local area*** in which the group resides.") (emphasis added).

[58] CETF Comments at 8.

[59] *See* AT&T Comments at 3, 25; CCTA Comments at 9; Charter Comments at 13-16; Comcast Comments at 24-25; TURN Comments at 22-24.

[60] *See EOY 2019 CA Residential Fixed Broadband Deployment*, Tableau https://public.tableau.com/app/profile/cpuc/viz/EOY2019BBdeploymentbyCountyandZipCode/Dashboard (last updated June 16, 2021); CCTA Comments at 2; Charter Comments at 12-13; Comcast Comments at 24; Cox Comments at 4.

[61] AT&T Comments at 3; *see also* Charter Comments at 14-15 (noting that "of the 500 CDPs with the lowest median incomes, nearly half (226) had 100 Mbps service available to at least 90% of households, and over half (264) had 100 Mbps service available to at least 75% of households").

is true for nearly all communities with the lowest incomes in Los Angeles County, and for urban residents more generally.[62] In fact, as Comcast's expert testimony shows, among the most populous census-designated places ("CDPs"), those with above the median income have *less* 100 Mbps service availability than lower income CDPs.[63]

Second, the comments establish conclusively that the relationship between population density and service is demonstrably stronger than the correlation between income and service. For example, AT&T shows that areas with low levels of 100 Mbps availability have several times fewer households per square mile than areas with high levels of 100 Mbps availability.[64] Charter, Comcast, and TURN's respective analyses all point to the same conclusion.[65] More generally, as the Commission's data shows, CDPs without 100 Mbps service or with low levels of 100 Mbps service are very likely to have low household density, and they are largely concentrated in the most rural parts of the state.[66] This is also confirmed by other proxies for the urban versus rural divide. As TURN points out, areas with higher numbers of community anchor institutions (i.e., urban areas) are more likely to have 100 Mbps available than areas with fewer anchor institutions (i.e., rural areas).[67]

This relationship between broadband deployment and density should not be misinterpreted or mistaken for discrimination based on income.[68] The economic explanation for this relationship is straightforward. As multiple commenters explain, for fixed broadband

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[62] CCTA Comments at 10.

[63] Comcast Comments at 25, Israel-Keating Decl. ¶ 33.

[64] AT&T Comments at 24-25.

[65] Charter Comments at 14 n.39; Comcast Comments, Israel-Keating Decl. ¶ 29; and TURN Comments at 23.

[66] *See* AT&T Comments at 24.

[67] TURN Comments at 23-24.

[68] *See, e.g.,* Comcast Comments, Israel-Keating Decl. ¶ 20 (explaining that "spurious correlation" between broadband deployment and income does not imply causation).

networks in particular, ***lower population density entails higher deployment costs***.[69] For instance, the National Diversity Coalition ("NDC") agrees it is reasonable to assume that geographic isolation would be strongly correlated with lack of service—given that building out to more remote locations normally entails greater costs.[70] Traditional telephone utilities still have not deployed to many rural customers after more than 100 years of operations,[71] even with high-cost support from the state and federal government. Local governments recognize impacts of deploying to remote areas, which is why they created density requirements for cable franchises.[72]

VI. REPLY TO COMMENTS ON QUESTION 7 IN THE ALJ RULING

Question 7. Are there other studies or analysis that parties wish to submit for the record in this proceeding?

CCTA's comments provide additional information dispelling the misplaced notion that FTTP is a preferred technology that the Commission should favor in its decision-making,[73] and Comcast's comments cite several recent studies the Commission should review and consider that add important dimensions to the discussion about affordability and other challenges to broadband adoption.[74] Comcast's and Charter's comments also provide expert analysis of certain of the

[69] *See* AT&T Comments at 4, 21; Charter Comments at 16.

[70] NDC Comments at 10.

[71] Federal Communications Commission, Universal Service Monitoring Report (2020), available at https://docs.fcc.gov/public/attachments/DOC-369262A1.pdf.

[72] *See, e.g.*, Milpitas Municipal Code, Section III.22-4.09(a) ("Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a density equivalent of forty (40) residential units per one- (1) cable mile of System…."); Winters Municipal Code 5.16.220 ("The grantee shall be required to extend energized trunk cable from any existing terminus of the cable system to any area within the franchise area having a density of at least ten (10) existing and completed dwelling units within any one-quarter linear mile …").

[73] *See* CCTA Comments at 10-13.

[74] *See* Comcast Comments at 26-27.

studies to which the Commission should accord significant weight.[75]

Parties asserting that redlining is a systemic problem in California offer no credible studies to support such a claim. Cal Advocates' analysis of Comcast's and AT&T California's service area that purports to show redlining begin with a false premise and misapply other statistical principles to reach a highly misleading result. The multivariate analysis presented in TURN's comments demonstrates that population density, not redlining, is the predominant predictor of broadband service availability.[76]

Other parties suggest different articles and studies be added to the record.[77] In deciding whether to accord these articles and studies any weight, CCTA respectfully urges the Commission to determine whether they: (i) address topics that are in scope and thus relevant to the issues before the Commission in this phase of this proceeding (i.e., redlining, broadband availability and/or broadband adoption); (ii) are prepared by credible and knowledgeable sources; (iii) are verifiable; and (iv) rely on current data.

[75] *See* Comcast Comments, Israel-Keating Decl. ¶¶ 45-51; Charter Comments, Ex. A, Brattle Group Study at 16-31.

[76] *See* TURN Comments at 23.

[77] *See, e.g.*, AARP Comments at 20-21; SBUA Comments at 7-8; NDC Comments at 10-11.

VII. REPLY TO COMMENTS ON QUESTION 8 IN THE ALJ RULING

Question 8. The Commission's Environmental and Social Justice Action Plan has as a stated goal (Goal 3) to increase access to high quality communications services for Environmental Justice and Social Justice communities. If it is found that ISPs have engaged in redlining practices, what actions should this Commission take to ensure high quality Internet service becomes available to previously redlined communities?

As is explained in detail above, there is no evidence in the record of systemic redlining. There is, however, broad consensus among the commenting parties that the Commission should focus its efforts to increase deployment to unserved areas—*i.e.*, "encouraging deployment of broadband-capable facilities to all areas"[78]—and to increase adoption—*i.e.*, "reaching those Californians who are interested but have not yet subscribed to readily available services."[79] Parties make a number of specific suggestions for increasing broadband availability and adoption—some of which are within the scope of this proceeding and worthy of consideration, and others that are not.

With respect to increasing broadband availability, a number of parties agree with CCTA that the Commission should focus its efforts on targeting CASF support to remaining ***unserved***

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[78] Small LECs Comments at 5; *see also* AT&T Comments at 6 (AT&T recommends a "sustainable and equitable subsidy for high-cost areas"); Charter Comments at 6 ("It is … critical that the Commission focus its efforts on encouraging deployments to unserved rural areas."); Consolidated Comments at 2 ("Consolidated supports the Commission looking into ways in which to encourage access to broadband in low income and rural areas, including … [the] deployment of fiber … as a way to further the Commission's goal of broadband for all."); Frontier Comments at 3 ("The Commission should … collaboratively engage with all communications carriers to identify existing financial and informational impediments to broadband access in … rural areas … Targeting additional public funds to improve access in … communities that … lack the resources to purchase the necessary devices to take advantage of broadband services would be an obvious starting point."); and CCTA Comments at 7-8.

[79] Cox Comments at 9; *see also* AT&T Comments at 6 (AT&T recommends "[i]mmediate relief for low-income consumers with access to broadband but who cannot afford it."); Consolidated Comments at 2 ("Consolidated supports the Commission looking into ways in which to encourage access to broadband … including … access to computing devices, as a way to further the Commission's goal of broadband for all."); Frontier Comments at 3 ("The Commission should … collaboratively engage with all communications carriers to identify existing financial and informational impediments to broadband access in … urban environments, particularly communities of color. Targeting additional public funds to improve access in … communities that … lack the resources to purchase the necessary devices to take advantage of broadband services would be an obvious starting point.").

areas in the state.[80] California's most remote, rural, and hardest to reach communities will continue to be left behind if public funds are used to overbuild existing facilities that already offer service at speeds of at least 25 Mbps downstream and 3 Mbps upstream.[81] Moreover, before considering any recommended changes to the CASF program, the Commission must first implement the changes mandated by the Broadband Trailer Bill. CCTA respectfully maintains that Rulemaking 20-08-021 (the on-going CASF rulemaking),[82] is the appropriate proceeding for considering any CASF-related proposals.

Several parties urge the Commission to facilitate broadband availability by removing deployment barriers. For example, Charter provides a detailed list of steps the Commission should take to enhance pole access, streamline environmental review, and facilitate permitting.[83] Cox similarly urges the Commission to complete action in its pending pole attachment

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[80] *See, e.g*., CETF Comments at 13, Cox Comments at 6 ("The task for the Commission is to determine how best to carefully and strategically target the few areas that will remain unserved after [Rural Digital Opportunities Fund] and CASF build-out commitments are completed."); Charter Comments at 6 ("It is … critical that the Commission focus its efforts on encouraging deployments to unserved rural areas.").

[81] Pub. Util. Code § 281(b)(1) (B)(ii) (defining "unserved area" as "an area for which there is no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 mbps downstream, 3 mbps upstream, and a latency that is sufficiently low to allow realtime interactive applications, considering updated federal and state broadband mapping data").

[82] R.20-08-021, *Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund*.

[83] Charter Comments at 35-36 (proposing that the Commission should: (1) adopt the pole attachment rule proposals set forth in the 2021 One-Touch Make-Ready ruling; (2) explore whether and how to assert authority as a lead agency for CEQA approval of broadband projects; (3) participate in regularly scheduled meetings with Caltrans to discuss communications infrastructure projects; (4) use the CPUC's position on the Broadband Council to encourage Caltrans to create a more transparent and predictable permitting process; (5) convene workshops and assist providers in coordinating with local governments to ensure that projects are not unreasonably delayed, and (6) support legislation to ensure such a declaratory ruling is binding on local governments; (7) issue interpretive guidance clarifying that a pole owner's right to assess one-time reimbursement fees for rearrangements performed at the request of the cable television corporation does not entitle it to use pole replacements as opportunities to impose windfall charges; and (8) explore ways to allow providers to deliver service to residents of MDUs and mobile home parks when property owners deny access.).

rulemaking and to collaborate with local agencies to ease permitting restrictions.[84]

With respect to adoption, CCTA supports ACLP's recommendation that the Commission evaluate broadband adoption rates across relevant demographic groups and work with stakeholders to assess the barriers to adoption for those who remain offline.[85] A collaborative solutions-focused approach is appropriate for a complex problem like adoption.[86] CCTA also supports Consolidated's and Frontier's recommendation that the Commission look at ways to increase device access among those households with lower levels of device ownership. [87] This may be a targeted way to successfully increase adoption rates in the near term.

The Commission should also reject parties' proposals for additional broadband reporting requirements.[88] The Commission already collects comprehensive broadband deployment and subscription data[89] and the proponents of additional reporting make no showing that existing reporting is inadequate or that the additional reporting they propose is necessary or useful.[90] Moreover, in implementing the new federal Broadband DATA Act, the FCC will, among other things, collect standardized, granular data on the availability and quality of both fixed and mobile

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[84] Cox Comments at 12.

[85] ACLP Comments at 20.

[86] CCTA understands that the Commission will be allocating resources to implementing requirements of the Broadband Trailer Bill and recommends a collaborative effort for those projects as well.

[87] Consolidated Comments at 2; Frontier Comments at 2.

[88] *See, e.g.,* AARP Comments at 12 (suggesting that the Commission seek clear authority from the Legislature to collect information about deployment and adoption); CETF Comments at 15 (recommending ISP reporting on subscriptions for low-cost broadband programs); Joint Advocates Comments at 10 (recommending broadband data at the address level). *See also* CWA Comments pdf at 18 (no page numbers in the comments); UCAN Comments at 19.

[89] *See* California Public Utilities Commission, *Guidelines for Broadband Data Submission*, available at https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-mapping-program/guidelines-for-broadband-data-submission.

[90] For example, reporting of actual speeds is not a useful metric because speeds could vary based on time of day or other conditions over which providers have no control. *See* Federal Communications Commission, *Broadband Service for the Home: A Consumer's Guide*, *available at* https://www.fcc.gov/research-reports/guides/broadband-service-home-consumers-guide.

broadband Internet access services.[91] Thus, the Commission can consider review of what changes the FCC is making so as to ensure there is no duplication of efforts.

Finally, the Joint Advocates and CETF urge the Commission to promote ISP participation in the California LifeLine program.[92] Changes to the LifeLine program are outside the scope of this proceeding[93] and the Commission is already considering support for broadband providers that wish to voluntarily participate in LifeLine in its ongoing LifeLine rulemaking.[94]

VIII. CONCLUSION

For the reasons set forth in its opening comments and herein, CCTA recommends that the Commission continue to take actions that promote the goals of the Governor's Executive Order, the Broadband Trailer Bill, and state policies to provide broadband access to all Californians. An investigation into redlining would not advance those goals. Rather, the Commission should focus its efforts on areas that will improve broadband adoption and advance broadband deployment in unserved areas.

Respectfully submitted,
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[91] *See* The Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130 codified at 47 U.S.C. § 641, *et. seq.*

[92] CETF Comments at 15; Joint Advocates Comments at 31.

[93] *See* Assigned Commissioner's Amended Scoping Memo at Ruling at 7 (establishing the scope of Phase II-B of this proceeding) (Apr. 20, 2021).

[94] *See* R.20-02-008, *Order Instituting Rulemaking to Update the California Universal Telephone Service (California LifeLine) Program*.